

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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| UNITED STATES OF AMERICA, |) | CR. NO. 18-00073 DKW (01) |
| |) | |
| Plaintiff, |) | FINDINGS AND |
| |) | RECOMMENDATION TO DENY |
| vs. |) | REQUEST FOR JUDICIAL |
| |) | RECOMMENDATION FOR |
| NATHAN YUEN GRIT LUM, |) | TRANSFER TO HOME |
| |) | CONFINEMENT |
| Defendant. |) | |
| _____ |) | |

**FINDINGS AND RECOMMENDATION TO DENY
REQUEST FOR JUDICIAL RECOMMENDATION
FOR TRANSFER TO HOME CONFINEMENT**

On April 15, 2020, Defendant Nathan Yuen Grit Lum (“Defendant”) filed a Request for Judicial Recommendation for Transfer to Home Confinement, asking the Court to recommend to the Bureau of Prisons (“BOP”) that Defendant be placed in home confinement for the maximum period possible, pursuant to the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”), the Second Chance Act of 2007, and 18 U.S.C. § 3621. ECF No. 45 (“Request”). The Government filed its response to the Request on April 29, 2020. ECF No. 46 (“Response”). The Court decides this matter without a hearing, due in part to some of the challenges posed by the COVID-19 emergency and pursuant to 7.1(c) of the Local Rules of Practice of the United States District Court for the District of Hawaii

(Local Rules), as incorporated by Rule 12.3 of the Criminal Local Rules.

The Court has carefully reviewed all of the information available to it, including the record in this case and the Defendant's medical condition, and for the reasons set forth below, it FINDS AND RECOMMENDS that the district court DENY the Request.

DISCUSSION

The district court sentenced Defendant on January 29, 2020, after a guilty plea to one count of aggravated identity theft (18 U.S.C. § 1028A) and one count of failure to file a tax return (26 U.S.C. § 7203). The court sentenced Defendant to 30 months' imprisonment along with one year of supervised release. At that time, the court made its judicial recommendations regarding location to the BOP based on Defendant's requests and individual circumstances. *See* ECF No. 41.

Absent a court's modification to a sentence under 18 U.S.C. § 3582(c), "discretion to release a prisoner to home confinement lies solely with the Attorney General." *Deffenbaugh v. Sullivan*, No. 5:19-HC-2049-FL, 2019 WL 1779573, at *1 (E.D.N.C. Apr. 23, 2019) (collecting authority). As set forth in declaration of Associate Warden AnnElizabeth Card attached to the Response, the Attorney General has provided recent guidance to BOP dated March 26, 2020, and April 3, 2020, to expand home confinement placement. ECF No. 46-1. The Court does not have authority to dictate BOP's placement of Defendant, and it leaves that

placement to BOP's discretion, taking into account the recent guidance it has received from the Attorney General. *Id.*

Based on the foregoing analysis, and pursuant to pursuant to 28 U.S.C. § 636(b)(1)(B), the Court FIND AND RECOMMENDS that the district court DENY Defendant's Request.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, May 8, 2020.



A handwritten signature in blue ink, appearing to read "K. Mansfield".

Kenneth J. Mansfield
United States Magistrate Judge

United States of America v. Lum, Cr. No. 18-00073 DKW (01); Findings and Recommendation to Deny Request for Judicial Recommendation for Transfer to Home Confinement